

## SUPREME COURT ORDINANCE 1975

## ARRANGEMENT OF SECTIONS

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HONG KONG

No. 92 OF 1975

L.S.

I assent.

 DENYS ROBERTS,  
*Acting Governor.*

18th December, 1975.

An Ordinance to amend and consolidate the law relating to the constitution, jurisdiction, practice and powers of the Supreme Court and the administration of justice therein and for matters ancillary thereto and connected therewith.

[ ]

Enacted by the Governor of Hong Kong, with the advice and consent of the Legislative Council thereof.

## PART I

## PRELIMINARY

1. This Ordinance may be cited as the Supreme Court Ordinance 1975 and shall come into operation on a day to be appointed by the Governor by notice in the *Gazette*. Short title and commencement.

2. In this Ordinance, unless the context otherwise requires— Interpretation.

“action” means a civil proceeding commenced by writ of summons or in such other manner as may be prescribed by any law;

“application for *habeas corpus*” means an application for a writ of *habeas corpus ad subjiciendum* and references to a criminal application or civil application shall be construed according as the application does or does not constitute a criminal cause or matter;

“cause” means any action, suit or other original proceeding between a plaintiff and a defendant;

“Commissioner” means a Commissioner appointed under section 10(1);

“defendant” includes any person served with any writ of summons or process, or served with notice of, or entitled to attend, any proceedings;

“High Court” means the High Court of Justice;

“judgment” includes decree;

“land” means land of whatever description, any part or section thereof, and tenements and buildings or parts of building (whether the division is horizontal, vertical or made in any other way);

“matter” includes every proceeding not in a cause;

“party” includes every person served with notice of or attending any proceeding, although not named on the record;

“plaintiff” includes every person asking any relief (otherwise than by way of counter-claim as a defendant) against any other person by any form of proceeding, whether the proceeding is by action, suit, petition, motion, summons or otherwise;

“pleading” includes any petition or summons, and also includes the statement in writing of the claim or demand of any plaintiff, and of the defence of any defendant thereto, and of the reply of the plaintiff to any counter-claim of a defendant;

“prescribed” means prescribed by rules of court;

“Registrar” means the Registrar of the Supreme Court;

“Registry” means any Registry of the Supreme Court.

## PART II

### THE SUPREME COURT

Supreme Court.  
[cf. 1925  
c. 49, s. 1.]

3. (1) There shall be a Supreme Court of Judicature consisting of the High Court of Justice and the Court of Appeal.

(2) Subject to the provisions of this Ordinance, the Supreme Court shall be a court of unlimited civil and criminal jurisdiction.

Constitution  
of High Court.

4. (1) The High Court shall consist of—

- (a) the Chief Justice; and
- (b) such judges as the Governor may appoint.

(2) A Justice of Appeal may sit in the High Court and act as a judge thereof whenever the business of the High Court so requires, in which case he shall have all the jurisdiction, powers and privileges of such a judge.

(3) The Chief Justice shall be the president of the High Court and, in his absence for any cause, the presidency shall be determined in accordance with the order of precedence prescribed in section 7.

Constitution  
of Court of  
Appeal.

5. (1) The Court of Appeal shall consist of—

- (a) the Chief Justice; and
- (b) such Justices of Appeal as the Governor may appoint.

(2) A judge of the High Court may, on the request of the Chief Justice, sit as an additional judge of the Court of Appeal, in which case he shall have all the jurisdiction, powers and privileges of a judge of the Court of Appeal.

(3) The Chief Justice shall be the president of the Court of Appeal and, in his absence for any cause, the presidency shall be determined in accordance with the order of precedence prescribed in section 7.

Appointment  
of judges.

6. (1) A judge of the Supreme Court, other than—

- (a) a judge appointed under subsection (1) or (2) of section 8; and
- (b) a Commissioner,

shall be appointed by Letters Patent under the Public Seal by the Governor, in accordance with such instructions as the Governor may receive through a Secretary of State.

(2) Any appointment made under subsection (1) may be given effect from a date anterior to that of the Letters Patent by which it is made:

Provided that nothing herein shall be deemed to authorize the discharge of any judicial functions by any person so appointed before the date of the Letters Patent or before the requirements of section 17 of the Oaths and Declarations Ordinance have been fulfilled. (Cap. 11.)

7. (1) The judges of the Supreme Court shall take precedence in the following order— Precedence.

- (a) the Chief Justice;
- (b) the Justices of Appeal, who among themselves shall rank according to the priority of their respective appointments;
- (c) the judges of the High Court, who among themselves shall rank according to the priority of their respective appointments;
- (d) Commissioners, who among themselves shall rank according to the priority of their respective appointments:

Provided that, where the Governor is of the opinion that there are sufficient reasons for so doing, he may determine the precedence of Commissioners irrespective of the priority of their appointments.

(2) Notwithstanding paragraphs (b) and (c) of subsection (1), where the Secretary of State is of the opinion that there are sufficient reasons for so doing, he may determine the precedence of the Justices of Appeal or the judges of the High Court, as the case may be, irrespective of the priority of their appointments.

8. (1) If the office of Chief Justice or any Justice of Appeal becomes vacant, by death or otherwise, the Governor may appoint another person to act in such office until the vacancy therein is filled. Acting appointments.

(2) If the Chief Justice or a Justice of Appeal is temporarily ill or absent, the Governor may appoint another person to act in his office until he resumes the duties thereof.

9. (1) A person shall be eligible to be appointed to be a judge of the Supreme Court if— Professional qualifications of judges.

- (a) he is qualified to practise as an advocate in a court in Hong Kong, England, Scotland, Northern Ireland or the Republic of Ireland having unlimited jurisdiction either in civil or criminal matters; or

- (b) he is qualified as mentioned in paragraph (a) and prior thereto was qualified to practise as a solicitor in such a court,

and, in either case, he has for at least 10 years practised as an advocate or solicitor in such a court.

(2) A person shall also be eligible to be appointed to be a judge of the Supreme Court if—

- (a) he is qualified to practise as an advocate in a court in Hong Kong, England, Scotland, Northern Ireland or some other part of the Commonwealth or the Republic of Ireland having unlimited jurisdiction either in civil or criminal matters; or

- (b) he is qualified as mentioned in paragraph (a) and prior thereto was qualified to practise as a solicitor in such a court,

and, in either case, he has, subject to subsection (3), for at least 10 years—

- (i) been a member of the Colonial Legal Service;
- (ii) been a member of the Legal Branch of Her Majesty's Overseas Civil Service;
- (iii) been a member of Her Majesty's Overseas Judiciary;

(Cap. 336.)

(Cap. 227.)

(Cap. 87.)

(Cap. 100.)

- (iv) been a District Judge appointed in accordance with section 4 or 7 of the District Court Ordinance;
- (v) been a permanent magistrate appointed by warrant under section 5 of the Magistrates Ordinance;
- (vi) been a legal officer as defined in section 2 of the Legal Officers Ordinance; or
- (vii) held any office specified in the Registrar General (Establishment) Ordinance appointment to which is restricted to persons who are legally qualified.

(3) For the purposes of calculating the period of 10 years referred to in subsection (2), periods of less than 10 years falling within any of paragraphs (i) to (vii) of that subsection may be combined, and there may be included in such period, any period of practice as an advocate or solicitor in any of the courts referred to in subsection (2)(a).

Appointment of Commissioners.

**10.** (1) The Chief Justice may appoint a person to be a Commissioner of the High Court if—

- (a) the office of any judge of the High Court becomes vacant for any reason; or
- (b) he considers that the interests of the administration of justice require that a Commissioner should be appointed temporarily.

(2) Subject to the terms of his appointment, a Commissioner shall have and may exercise all the jurisdiction, powers and privileges and shall have and perform all the duties of a judge of the High Court, and any reference in any law to such a judge shall be construed accordingly.

(3) Without prejudice to the powers conferred on him by subsection (1), the Chief Justice may appoint a Commissioner under that subsection—

- (a) for the purposes of a specified case or class of cases only; or
- (b) for a specified period only.

(4) Notwithstanding subsection (2), the Chief Justice may terminate the appointment of a Commissioner at any time.

Powers of Commissioners in cases which are part-heard on termination of appointment.

**11.** If the hearing of any proceedings before a Commissioner is adjourned or if he reserves judgment in any proceedings, the Commissioner shall have power to resume the hearing and determine the proceedings or deliver judgment, notwithstanding that his appointment as a Commissioner has expired or has been terminated.

### PART III

#### JURISDICTION, LAW, PRACTICE AND POWERS

Jurisdiction of High Court.

- 12.** (1) The High Court of Justice shall be a superior court of record.
- (2) The civil jurisdiction of the High Court shall consist of—
- (a) original jurisdiction and authority of a like nature and extent as that held and exercised by the Chancery, Family and Queen's Bench Divisions of the High Court of Justice in England; and
  - (b) any other jurisdiction, whether original or appellate jurisdiction, conferred on it by any law.

- (3) The criminal jurisdiction of the High Court shall consist of—
- (a) original jurisdiction of a like nature and extent as that held and exercised in criminal matters by the High Court of Justice and the Crown Court in England respectively; and
- (b) any other jurisdiction, whether original or appellate jurisdiction, conferred on it by any law.
- (4) The High Court shall have in addition such jurisdiction as may be exercised in England by the Lord Chancellor and judges of the Supreme Court of Judicature in England under the Mental Health Act 1959. (1959 c. 72.)

13. (1) The Court of Appeal shall be a superior court of record. Jurisdiction of Court of Appeal.

- (2) The civil jurisdiction of the Court of Appeal shall consist of—
- (a) appeals from any judgment or order of the High Court in any civil cause or matter;
- (b) appeals under section 63 of the District Court Ordinance; and (Cap. 336.)
- (c) any other jurisdiction conferred on it by any law.

(3) The criminal jurisdiction of the Court of Appeal shall consist of—

(a) appeals from the High Court or District Court under Part IV of the Criminal Procedure Ordinance; (Cap. 221.)

- (b) the consideration of questions of law reserved under section 81(1) of the Criminal Procedure Ordinance;
- (c) the consideration of applications by the Attorney General for the review of any sentence under section 81A(1) of the Criminal Procedure Ordinance;
- (d) appeals by way of case stated from the District Court under section 84 of the District Court Ordinance; and
- (e) any other jurisdiction conferred on it by any law.

14. (1) Subject to subsection (3), an appeal shall lie as of right to the Court of Appeal from every judgment or order of the High Court in any civil cause or matter. Appeals in civil matters.

(2) An appeal shall lie as of right to the Court of Appeal from every judgment or order of a special referee given or made—

- (a) on the trial of any civil cause or matter; or
- (b) in respect of any question or issue of fact which arises out of a civil cause or matter and which is ordered to be tried before the special referee.

(3) No appeal shall lie—

- (a) from an order of the High Court allowing an extension of time for appealing from a judgment or order; 1925 c. 49, s. 31.
- (b) from an order of the High Court giving unconditional leave to defend an action;
- (c) from a judgment or order of the High Court, where it is provided by any Ordinance or by rules of court that the same is to be final;
- (d) from an order absolute for the dissolution or nullity of marriage in favour of any party who, having had time and opportunity to appeal from the decree *nisi* on which the order was founded, has not appealed from that decree;

- (e) without the leave of the High Court or the Court of Appeal, from an order made with consent of the parties or as to costs only which by law are left to the discretion of the Court;
- (f) without the leave of the High Court or the Court of Appeal, from a judgment or order of the High Court given or made in summarily determining under rules of court any question at issue in interpleader proceedings:

Provided that this paragraph shall have no effect in relation to any interpleader issue which is tried by a judge whether with or without a jury.

General powers of Court of Appeal. (Cap. 221.)

15. Subject to the Criminal Procedure Ordinance and without prejudice to any other law, the Court of Appeal shall, for the purposes of and incidental to the hearing and determination of any appeal or other matter, and the amendment, execution and enforcement of any judgment or order, have all the power, authority and jurisdiction of the High Court.

Law and equity to be administered in Supreme Court. [cf. 1925 c. 49. ss. 36-44.]

16. (1) In every civil cause or matter law and equity shall be administered by the Supreme Court as they are administered by the High Court and the Court of Appeal in England.

(2) In all causes or matters in which there is any conflict or variance between the rules of equity and the rules of common law with reference to the same subject, the rules of equity shall prevail.

Practice of Supreme Court.

17. Subject to rules of court, the practice of the Supreme Court of Judicature in England for the time being in force therein shall be in force in the Supreme Court.

Motion for new trial. 1925 c. 49. s. 30.

18. Every motion for a new trial, or to set aside a verdict, finding or judgment, in any civil cause or matter in the High Court in which there has been a trial thereof or of any question or issue of fact therein with a jury shall be heard and determined by the Court of Appeal.

Mandamus, injunction and receiver. [cf. 1925 c. 49. s. 45.]

19. (1) The High Court may grant a *mandamus* or an injunction, or appoint a receiver by an interlocutory order in all cases in which it appears to the High Court to be just or convenient so to do.

(2) Any such order may be made either unconditionally or on such terms and conditions as the High Court thinks just.

(3) If, whether before, or at, or after the hearing of any cause or matter, an application is made for an injunction to prevent any threatened or apprehended waste or trespass, the injunction may be granted, if the High Court thinks fit, whether—

- (a) the person against whom such injunction is sought is or is not in possession under any claim of title or otherwise, or (if out of possession) does or does not claim a right to do the act sought to be restrained under any colour of title; and
- (b) the estates claimed by both or by either of the parties are legal or equitable.

1956 c. 46, s. 36(1), (2).

(4) The power of the High Court to appoint a receiver by way of equitable execution shall be extended so as to operate in relation to land and any interest in land.

(5) The power under subsection (4) may be exercised in relation to land or any interest in land (whether or not a charge has been imposed on that land or interest under section 20 for the purpose of enforcing the judgment, decree, order or award under that section), and the power shall be in addition to and not in derogation of any power of any court to appoint a receiver in proceedings for enforcing such a charge.



20. (1) The High Court may, for the purpose of enforcing a judgment or order of the High Court for the payment of money to a person, by order impose on such land or interest in land of the debtor as may be specified in the order a charge for securing the payment of any moneys due or to become due under the judgment or order.

Power of High Court to impose charges on land of judgment debtor.

(2) An order under subsection (1) may be made either absolutely or subject to conditions as to notifying the debtor as to the time when the charge is to become enforceable or as to other matters.

[cf. 1956 c. 46, s. 35.]

(3) The Land Registration Ordinance shall apply to orders under subsection (1) as it applies to registration of judgments or orders affecting land but, save as aforesaid, a charge imposed under subsection (1) shall have the like effect and shall be enforceable in the same manner as an equitable charge created by the debtor by writing under his hand.

(Cap. 128.)

(4) This section shall apply to a judgment, order, decree or award however called of any court or arbitrator, including any foreign court or foreign arbitrator, which is or has become enforceable, whether wholly or to a limited extent, as it applies to a judgment or order of the High Court.

21. A sum standing to the credit of a person in a deposit account in a bank shall, for the purposes of the jurisdiction of the High Court to attach debts for the purpose of satisfying judgments or orders for the payment of money, be deemed to be a sum due or accruing to that person and, subject to rules of court, shall be attachable accordingly, notwithstanding that any of the following conditions applicable to the account, that is to say—

Attachment of debts.

[cf. 1956 c. 46, s. 38.]

- (a) any condition that notice is required before any money is withdrawn;
- (b) any condition that a personal application must be made before any money is withdrawn;
- (c) any condition that a deposit book must be produced before any money is withdrawn;
- (d) any condition that a receipt for money deposited must be produced before any money is withdrawn; or
- (e) any other condition prescribed by rules of court,

has not been satisfied.

22. (1) Where any person neglects or refuses to comply with a judgment or order of the High Court directing him to—

Execution of instruments by order of High Court.

[cf. 1925 c. 49, s. 47.]

- (a) execute any conveyance, contract or other document; or
- (b) endorse any negotiable instrument,

the High Court may, on such terms and conditions as it thinks fit, order that it shall be executed or endorsed, as the case may be, by a person nominated by the High Court for that purpose.

(2) A conveyance, contract, document or instrument executed or endorsed in accordance with subsection (1) shall have the same effect as if it had been executed or endorsed by the person originally directed to execute or endorse it.

(3) Nothing herein shall be held to abridge the powers of the High Court to proceed by attachment against any person neglecting or refusing to execute or endorse any such instrument.

23. (1) Notwithstanding anything in any law or rule of court, where a criminal or civil application for *habeas corpus* has been made by or in respect of any person, no such application shall again be made to the High

*Habeas corpus.*

[cf. 1960 c. 65, s. 14.]

Court or any judge thereof by or in respect of that person on the same grounds, unless fresh evidence is adduced in support of the application.

(Cap. 136.)

(2) In every case where the person by or in respect of whom an application for *habeas corpus* is made is restrained as a person liable, or treated by virtue of any law as liable, to be detained in pursuance of an order or direction under Part IV of the Mental Health Ordinance (otherwise than by virtue of paragraph (e) or (f) of section 53(2) of that Ordinance), the application shall be deemed for the purposes of this section and of any appeal in the proceedings to constitute a criminal cause or matter.

Appeal in  
*habeas corpus*  
proceedings.  
[cf. 1960  
c. 65. s. 15.]

24. An appeal shall lie as of right to the Court of Appeal from any decision of the High Court on a criminal or civil application for *habeas corpus*, whether the High Court orders the release of the person restrained or refuses to make such an order.

Power of  
Court of  
Appeal to vary  
sentence on  
*certiorari*.  
[cf. 1960  
c. 65. s. 16.]

25. (1) Where a person who has been sentenced for an offence by a magistrate or the District Court applies to the High Court for an order of *certiorari* to remove the proceedings before the magistrate or the District Court into the High Court, and the High Court determines that the magistrate or the District Court had no power to pass the sentence, the High Court may, instead of quashing the conviction, amend it by substituting for the sentence passed any sentence which the magistrate or the District Court had power to impose.

(2) Any sentence passed by the High Court by virtue of this section in substitution for the sentence passed by a magistrate or the District Court shall, unless the High Court otherwise directs, begin to run from the time when it would have begun to run if passed by the magistrate or the District Court.

(3) This section shall apply, with the necessary modifications, in relation to any order of a magistrate or the District Court which is made on, but does not form part of, the conviction of an offender as it applies in relation to a conviction and sentence.

Wards of  
court.  
1949  
c. 100. s. 9.

26. (1) Subject to the provisions of this section, no infant shall be made a ward of court except by virtue of an order to that effect made by the High Court.

(2) Where application is made for such an order in respect of an infant, the infant shall become a ward of court on the making of the application, but shall cease to be a ward of court at the expiration of such period as may be prescribed by rules of court unless within that period an order has been made in accordance with the application.

(3) The High Court may, either upon an application in that behalf or without such an application, order that any infant who is for the time being a ward of court shall cease to be a ward of court.

Vexatious  
litigants.  
[cf. 1925  
c. 49. s. 51.]

27. If, on an application made by the Attorney General under this section, the High Court is satisfied that any person has habitually and persistently and without any reasonable ground instituted vexatious legal proceedings, whether in the High Court or in any inferior court, and whether against the same person or against different persons, the High Court may, after hearing that person or giving him an opportunity of being heard, order that no legal proceedings shall without the leave of the High Court be instituted by him in any court and that any proceedings instituted by him in any court before the making of the order shall not be continued by him without such leave and such leave shall not be given unless the High Court is satisfied that the proceedings are not an abuse of the process of the Court and that there is *prima facie* ground for the proceedings.

## PART IV

## SITTINGS AND DISTRIBUTION OF BUSINESS

**28.** (1) The Supreme Court shall sit at such times and at such places as the Chief Justice shall appoint. Sittings of Supreme Court and distribution of business.

(2) The distribution of business of the Supreme Court shall be made in accordance with directions given by the Chief Justice.

**29.** (1) The following vacations shall be observed in each year in the Supreme Court and the Registries— Vacations.

- (a) the long vacation;
- (b) the Christmas vacation; and
- (c) the Easter vacation.

(2) The dates of the vacations referred to in subsection (1) shall be prescribed by rules of court.

(3) The days of the commencement and termination of each vacation shall be included in such vacation.

**30.** (1) The Supreme Court and the Registries shall be open during any vacation (except on general holidays) for the purpose of— Business in vacations.

- (a) holding criminal trials and determining criminal appeals and the transaction of all business incidental thereto; and
- (b) issuing writs and transacting any business under subsection (2).

(2) The Supreme Court shall during any vacation hear and determine all such applications as may require to be immediately or promptly heard, and all applications for summary judgment.

(3) No pleading shall be filed during any vacation except by order of the High Court.

**31.** (1) Where by any law regulating civil procedure, or by any special order of the Supreme Court, any period not exceeding one month is appointed or allowed for the doing of any act or the taking of any proceeding, no days included in a vacation shall be reckoned in the computation of such time, unless the Court otherwise directs: Computation of vacation period and validity of acts therein.

Provided that nothing in this section shall be deemed to extend the time for entering appearance to any specially endorsed writ.

(2) Every act, matter or thing done during any vacation shall be as valid to all intents and purposes as if done out of vacation.

**32.** (1) Subject to sections 41 and 42 of the Criminal Procedure Ordinance, to subsection (3) of this section and to rules of court, every proceeding in the High Court and all business arising therefrom shall be heard and determined by a judge of the High Court sitting alone. Proceedings in High Court to be disposed of by single judge. (Cap. 221.)

(2) The proceedings in every action or matter subsequent to the trial or hearing, down to and including the final judgment or order, and any application for leave to appeal or for a stay of execution shall, so far as is practicable and convenient, be taken before the judge of the High Court before whom the trial or hearing took place.

(3) The Chief Justice may direct that any proceeding, or class of proceeding, in the High Court shall be heard and determined by two or more judges of the Court.

Powers of  
judge in  
chambers.  
[cf. 1925  
c. 49, s. 61.]

**33.** (1) A judge of the High Court may, subject to rules of court, exercise in chambers all or any part of the jurisdiction vested in the High Court, in all such causes and matters and in all such proceedings in any causes or matters as may be heard in chambers by a judge of the High Court in England or as may be directed or authorized to be so heard by rules of court.

(2) A judge of the High Court sitting in court shall be deemed to constitute a court of the High Court.

Sittings of  
Court of  
Appeal.

**34.** (1) Subject to subsection (2), every appeal to the Court of Appeal—

(a) against a final order or judgment;

(b) by way of motion for a new trial or to set aside a verdict, finding or judgment in any cause or matter in the High Court in which there has been a trial thereof or of any issue therein with a jury; or

(Cap. 221.)

(c) under Part IV of the Criminal Procedure Ordinance,

shall be heard before an uneven number of judges, not being less than three.

(2) An appeal against an interlocutory order or judgment may be heard before not less than two judges.

(3) No judge shall sit as a member of the Court of Appeal on the hearing of, or shall determine any application in proceedings incidental or preliminary to—

(a) an appeal from a judgment or order made by him; or

(b) an appeal against a conviction before him or a sentence passed by him.

(4) Subject to subsection (6), where a Court of Appeal consisting of three or more judges sits, the judgment or order which is that of the majority of the judges sitting shall be deemed to be the judgment or order of the Court of Appeal, but if there is no judgment or order which is that of a majority of the judges sitting, the judgment or order appealed from shall be deemed to be the judgment or order of the Court of Appeal.

(5) Where a Court of Appeal consisting of two judges only sits and the two judges differ, then the judgment or order appealed from shall be disturbed only in so far as it may be modified or affected by any order they make as to which they do not differ:

Provided that—

(a) if the judgment or order appealed from is not so modified or affected, it shall be deemed to be the judgment or order of the Court of Appeal; or

(b) if the judgment or order appealed from is so modified or affected, it shall, as so modified or affected, be deemed to be the judgment or order of the Court of Appeal.

(Cap. 221.)

(6) In the case of an appeal under Part IV of the Criminal Procedure Ordinance, if no two of the judges agree as to the judgment or order to be made—

(a) the judgment or order of the trial judge; or

(b) where there is no such judgment or order, the judgment or order of the President,

shall be deemed to be the judgment of the Court of Appeal.

(7) For the purposes of this section and section 35, an appeal under Part IV of the Criminal Procedure Ordinance includes the consideration of a question of law reserved for the consideration of the Court of Appeal and the consideration of an application by the Attorney General for the review of any sentence under sections 81 and 81A respectively of that Ordinance. (Cap. 221.)

**35.** (1) Subject to subsection (3), in pursuance of the civil jurisdiction of the Court of Appeal, any order or direction not involving the determination of the appeal may be made or given by a single judge sitting in court or in chambers, and a single judge may likewise make any interim order which he may think fit to prevent prejudice to the claims of any party pending an appeal. Powers of single judge in Court of Appeal.

(2) Subject to subsection (4), in pursuance of the criminal jurisdiction of the Court of Appeal, any power of the Court of Appeal not involving the determination of the appeal may be exercised by a single judge in the same manner as it may be exercised by the Court of Appeal and subject to the same provisions.

(3) Every order or direction made or given by a single judge under subsection (1) may be discharged or varied by the Court of Appeal.

(4) Where a single judge refuses an application to exercise any of the power of the Court of Appeal in pursuance of subsection (2), the applicant shall be entitled to have the application determined by the Court of Appeal.

**36.** Where by or under any law any judicial or other act is required or authorized to be exercised or performed by the Chief Justice, such act may be exercised or performed by any judge of the Supreme Court. Acts required to be done by Chief Justice may also be done by any judge.

## PART V

### REGISTRAR AND OTHER OFFICERS

**37.** There shall be attached to the Supreme Court a Registrar and such deputy registrars and assistant registrars as may be appointed. Registrar of Supreme Court.

**38.** (1) The Registrar shall have and may exercise and perform— Jurisdiction, powers and duties of Registrar.

(a) the same jurisdiction, powers and duties as the Masters, Registrars and like officers of the Supreme Court of Judicature in England; and

(b) such other jurisdiction, powers and duties as may be conferred or imposed on him by or under rules of court or any other law.

(2) Subject to rules of court, all the jurisdiction, powers and duties conferred or imposed on the Registrar may be had, exercised or performed by a deputy or assistant registrar.

**39.** (1) No action shall be brought against the Registrar for— Protection of Registrar.

(a) any act done or omitted to be done by any bailiff without directions from the Registrar; or

(b) any direction given to any bailiff with regard to the execution or non-execution of process if—

(i) such directions are in accordance with an order from the High Court under section 40; and

(ii) no material fact is wilfully misrepresented or suppressed by the Registrar.

(2) In this section—

“Registrar” includes a deputy or assistant registrar.

Registrar may  
apply for order.

**40.** The Registrar may, in case of doubt or difficulty, apply summarily to the High Court for an order for the direction and guidance of a bailiff, and the High Court may make such order in the matter as may seem just and reasonable.

## PART VI

### DISCOVERY AND RELATED PROCEDURES

Power of High  
Court to order  
disclosure, etc.  
of documents  
before com-  
mencement of  
proceedings.

[cf. 1970  
c. 31, s. 31.]

**41.** On the application, in accordance with rules of court, of a person who appears to the High Court to be likely to be a party to subsequent proceedings in that Court in which a claim in respect of personal injuries to a person or in respect of a person's death is likely to be made, the High Court shall, in such circumstances as may be specified in the rules, have power to order a person who appears to the High Court to be likely to be a party to the proceedings and to be likely to have or to have had in his possession, custody or power any documents which are relevant to an issue arising or likely to arise out of that claim—

- (a) to disclose whether those documents are in his possession, custody or power; and
- (b) to produce to the applicant such of those documents as are in his possession, custody or power.

Extension of  
powers of High  
Court to order  
disclosure of  
documents,  
inspection of  
property, etc.  
[cf. 1970  
c. 31, s. 32.]

**42.** (1) On the application, in accordance with rules of court, of a party to any proceedings in which a claim in respect of personal injuries to a person or in respect of a person's death is made, the High Court shall, in such circumstances as may be specified in the rules, have power to order a person who is not a party to the proceedings and who appears to the High Court to be likely to have or to have had in his possession, custody or power any documents which are relevant to an issue arising out of that claim—

- (a) to disclose whether those documents are in his possession, custody or power; and
- (b) to produce to the applicant such of those documents as are in his possession, custody or powers.

(2) On the application, in accordance with rules of court, of a party to any such proceedings as are referred to in subsection (1), the High Court shall, in such circumstances as may be specified in the rules, have power to make an order providing for any one or more of the following matters—

- (a) the inspection, photographing, preservation, custody and detention of property which is not the property of, or in the possession of, any party to the proceedings but which is the subject matter of the proceedings or as to which any question arises in the proceedings;
- (b) the taking of samples of any such property as is mentioned in paragraph (a) and the carrying out of any experiment on or with any such property.

(3) Subsections (1) and (2) are without prejudice to the exercise by the High Court of any power to make orders which is exercisable apart from those provisions.

(4) In this section—

“property” includes any land, chattel or other corporeal property of any description.

43. (1) The power to make rules of court under section 54 shall include power to make rules of court as to the circumstances in which an order under section 41 or 42 can be made; and any such rules may include such incidental, supplementary and consequential provisions as the Rules Committee may consider necessary or expedient.

Provisions supplementary to sections 41 and 42. [cf. 1970 c. 31, s. 83.]

(2) Without prejudice to the generality of subsection (1), rules of court shall be made for the purpose of ensuring that the costs of and incidental to proceedings for an order under sections 41 and 42 incurred by the person against whom the order is sought shall be awarded to that person unless the High Court otherwise directs.

(3) In sections 41, 42 and 45—

“personal injuries” includes any disease and any impairment of a person’s physical or mental condition.

44. (1) On the application of any person in accordance with rules of court, the High Court shall, in such circumstances as may be specified in the rules, have power to make an order providing for any one or more of the following matters—

Powers of High Court exercisable before commencement of action.

(a) the inspection, photographing, preservation, custody and detention of property which appears to the Court to be property which may become the subject matter of subsequent proceedings in the Court, or as to which any question may arise in any such proceedings; and

[cf. 1969 c. 58, s. 21.]

(b) the taking of samples of any such property as is mentioned in paragraph (a) and the carrying out of any experiment on or with any such property.

(2) The power to make rules of court shall include power to make rules of court as to the manner in which an application for such an order can be made, and as to the circumstances in which such an order can be made; and any such rules may include such incidental, supplementary and consequential provisions as the Rules Committee may consider necessary or expedient.

(3) In this section—

“property” includes any land, chattel or other corporeal property of any description.

45. (1) Section 44 shall bind the Crown so far as it relates to property (within the meaning of that section) as to which it appears to the High Court that it may become the subject matters of subsequent proceedings involving a claim in respect of personal injuries to a person or in respect of a person’s death.

Application to Crown of sections 41 to 44.

[cf. 1970 c. 31, s. 35.]

(2) Sections 41, 42 and 43 shall bind the Crown.

(3) The High Court shall not make an order under section 41, 42 or 44 if it considers that compliance with the order, if made, would be likely to be injurious to the public interest.

## PART VII

### MISCELLANEOUS AND SUPPLEMENTARY PROVISIONS

#### *Abolition of writs ne exeat*

46. The writ of *ne exeat regno* is abolished and for the avoidance of doubt the writ of *ne exeat colonia* is also abolished.

Abolition of writs *ne exeat regno* and *ne exeat colonia*.

*Judges*

Judges to be justices of the peace *ex officio*.

47. Every judge of the Supreme Court shall be a justice of the peace by virtue of his office.

*Interest*

Interest on claims for debt and damages.

48. (1) Subject to subsection (2), the High Court may, in any proceedings brought in the High Court for the recovery of any debt or damages, order that there shall be included in the sum for which judgment is given interest at such rate as it thinks fit on the whole or any part of the debt or damages for the whole or any part of the period between the date when the cause of action arose and the date of the judgment.

(2) Nothing in subsection (1) shall—

- (a) authorize the giving of interest upon interest;
- (b) apply in relation to any debt on which interest is payable as of right whether by virtue of any agreement or otherwise; or
- (c) affect the damages recoverable for the dishonour of a bill of exchange.

(3) The powers conferred by subsection (1) may be exercised—

- (a) whether or not interest is expressly claimed;
- (b) at any time after judgment is entered in any case in which it appears that the failure to apply for or to award interest was through inadvertence; and
- (c) in the case of a judgment entered by default or by order of the Registrar, by the Registrar.

Interest on judgments.

49. A judgment debt shall carry interest at such rate as may be prescribed by rules of court on the aggregate amount thereof, or on such part thereof as for the time being remains unsatisfied from the date of the judgment until satisfaction.

*Contempt of court*

Appeal in cases of contempt of court.

[*cf.* 1960 c. 65, s. 13.]

50. (1) Subject to this section, an appeal shall lie from any order or decision of a court, other than the Court of Appeal, in the exercise of jurisdiction to punish for contempt of court, including criminal contempt; and in relation to any such order or decision this section shall have effect in substitution for any other law relating to appeals in civil or criminal proceedings.

(2) An appeal under this section shall lie to the Court of Appeal in any case at the instance of the person against whom the proceedings for contempt of court were brought or the order was made and, in the case of an application for committal or attachment, at the instance of the applicant.

(3) The Court of Appeal may on appeal reverse or vary the order or decision of a court, and make such other order as may be just; and without prejudice to the powers of any court to grant bail, provision may be made by rules of court for authorizing the release on bail of an appellant under this section.

(4) In this section—

- (a) “court” includes any tribunal or person having power to punish for contempt; and
- (b) references to an order or decision of a court in the exercise of jurisdiction to punish for contempt of court include references to



an order or decision of any court under any law enabling the court to deal with an offence as if it were contempt of court.

(5) This section does not apply to a conviction or sentence in respect of which an appeal lies under the Criminal Procedure Ordinance, or to a decision of the Court of Appeal under that Ordinance; and for the purposes of that Ordinance and of this subsection an order for the punishment of any person for contempt of court in proceedings in which he has a right of appeal against his sentence shall be treated as part of that sentence. (Cap. 221.)

### *Seal*

51. The Supreme Court shall continue to use the existing seal and all writs, judgments, orders and other process issuing out of the Court shall be sealed therewith. Seal of Supreme Court.

52. In any proceedings in the Supreme Court, a judge may order the re-imbusement of a witness in respect of any expenses reasonably and properly incurred by that witness. Expenses.

### *Assessors*

53. (1) In any civil proceedings, the High Court may call to its aid one or more assessors specially qualified and may dispose of such proceedings, wholly or in part, with the aid of such assessor or assessors, but the decision of the judge shall be the decision of the High Court. Assessors.

(2) The High Court may determine the remuneration, if any, to be paid to an assessor in respect of his services:

Provided that nothing in this subsection shall authorize the payment of remuneration to any person employed full time in any office of emolument under the Crown.

### *Rules*

54. (1) The Rules Committee constituted under section 55 may make rules of court regulating and prescribing the procedure (including the method of pleading) and the practice to be followed in the Supreme Court in all causes and matters whatsoever in or with respect to which the Supreme Court has jurisdiction (including the procedure and practice to be followed in the Registries of the Supreme Court) and any matters incidental to or relating to that procedure or practice. Rules of court.

(2) Without prejudice to the generality of subsection (1), rules of court may be made for the following purposes—

- (a) prescribing the procedure in connexion with the transfer of proceedings between the High Court and the District Court;
- (b) prescribing the jurisdiction of the Supreme Court which may be exercised by the Registrar, a deputy registrar or assistant registrar (including provision for appeal against decisions in the exercise of such jurisdiction);
- (c) prescribing the fees and percentages to be taken in the Supreme Court, the fees of counsel and the costs of solicitors and the costs of proceedings in that Court;
- (d) repealing any laws which relate to matters with respect to which rules may be made under this section;

- (e) prescribing in what cases persons absent, but having an interest in a cause or matter, shall be bound by any order made therein;
- (f) prescribing in what cases and in what manner there may be submissions and references to special referees, how parties shall be bound thereby, and to what extent and with what consequences, and for the appointment, powers and duties of special referees and for proceedings before such special referees;
- (g) regulating the appointment and duties of commissioners for oaths, the revocation of such appointments, and matters incidental thereto;
- (h) regulating the execution of the process of the Supreme Court;
- (i) regulating matters which could heretofore be or which have heretofore been provided for or regulated by rules of court.

(3) Rules of court for regulating the procedure and practice (including fees and costs) in the exercise of the Admiralty jurisdiction of the High Court may be made hereunder and shall come into operation on approval by the Queen in Council save insofar as such approval may not be necessary under section 7 of the Colonial Courts of Admiralty Act 1890.

(1890 c. 27.)

(4) The power to make rules of court under this section shall include power to make rules as to proceedings by or against the Crown.

(5) Rules of court made under this section shall apply to all proceedings by or against the Crown insofar as they expressly purport so to do.

Rules Committee.

55. (1) The rules of court shall be made by a Rules Committee which shall consist of—

- (a) the Chief Justice;
- (b) a Justice of Appeal appointed by the Chief Justice;
- (c) four judges of the High Court appointed by the Chief Justice;
- (d) two barristers nominated by the Hong Kong Bar Association;
- (e) two solicitors nominated by The Law Society of Hong Kong.

(2) Five members of the Rules Committee shall constitute a quorum if both a barrister and a solicitor are present.

(3) Nothing herein contained shall prevent the Chief Justice, if he thinks fit, from appointing more than one Rules Committee.

Orders for interim payment. [cf. 1969 c. 58, s. 20.]

56. (1) The power to make rules of court under section 54 shall include power to make provision for enabling the Supreme Court in such circumstances as may be specified to make an order requiring a party to pending proceedings to make an interim payment of such amount as may be specified in the order, either by payment into court or (if the order so provides) by paying it to another party to the proceedings.

(2) Where any such rules make provision in accordance with subsection (1), the rules may include provision for enabling a party to any proceedings who, in pursuance of such an order, has made an interim payment to recover the whole or part of the amount of the payment in such circumstances, and from such other party to the proceedings, as may be determined in accordance with the rules.

(3) Any rules made by virtue of this section may include such incidental, supplementary and consequential provisions as the Rules Committee may consider necessary or expedient.

(4) Nothing in this section shall be construed as affecting the exercise of any power relating to costs, including any power to make rules of court relating to costs.

(5) In this section—

- (a) “interim payment”, in relation to a party to any proceedings, means a payment on account of any damages, debt or other sum (excluding any costs) which that party may be held liable to pay to or for the benefit of another party to the proceedings if a final judgment or order of the Court in the proceedings is given or made in favour of that other party; and
- (b) any reference to a party to any proceedings includes a reference to any person who for the purposes of the proceedings acts as next friend or guardian of a party to the proceedings.

(6) This section shall bind the Crown so far as any proceedings to which the section is applicable can be brought by or against the Crown in accordance with the Crown Proceedings Ordinance.

(Cap. 300.)

57. (1) The Chief Justice may make rules for regulating—

- (a) the deposit, payment, delivery, and transfer in, into, and out of the Supreme Court of money, securities, and movable property of suitors;
- (b) the evidence of such deposit, payment, delivery, or transfer, and the investment of and other dealings with money, securities, and movable property in court;
- (c) the execution of the orders of the Supreme Court; and
- (d) the powers and duties of the Registrar with reference to such money, securities, and property.

Rules concerning deposit, etc. of moneys, etc. in Supreme Court.

(2) Without prejudice to the generality of the foregoing, rules made under this section may provide for—

- (a) regulating the placing on and withdrawal from deposit of money in court, and the payment or crediting of interest on money placed on deposit;
- (b) determining the smallest amount of money on deposit on which interest is to be credited to an account to which money placed on deposit belongs;
- (c) determining the time at which money placed on deposit is to begin and to cease to bear interest and the mode of computing such interest;
- (d) determining the cases in which money placed on deposit is to begin and to cease to bear interest and the mode of computing such interest;
- (e) determining the cases in which interest on money placed on deposit and the dividends on any securities standing in the name of the Registrar is or are to be placed on deposit; and
- (f) disposing of money, other than the balance of an intestate estate, remaining unclaimed in court or money remaining unclaimed in the Bankruptcy Estates Account established under section 128 of the Bankruptcy Ordinance.

(Cap. 6.)

PART VIII

GENERAL

Repeal and amendment. (Cap. 2.) (Cap. 4.) Schedule.

58. (1) The Full Court Ordinance and the Supreme Court Ordinance are repealed.

(2) The Ordinances specified in the Schedule are amended in the manner specified therein.

Amendment of references in laws to Full Court and Supreme Court.

59. In any law, unless the context otherwise requires—

- (a) for any reference to the Full Court, there shall be substituted a reference to the Court of Appeal;
- (b) for any reference to the Supreme Court, there shall be substituted a reference to the High Court; and
- (c) any reference to a judge or officer of the Full Court or the Supreme Court shall be construed as a reference to a judge or officer of the Court of Appeal and the High Court, respectively.

Transitional.

60. (1) Any civil or criminal proceeding pending in the Full Court or the Supreme Court at the commencement of this Ordinance shall continue in and be determined by the Court of Appeal and the High Court, respectively, save that any application for *habeas corpus* or for an order of *mandamus*, *certiorari* or prohibition so pending in the Full Court shall continue in and be determined by the High Court.

(2) Any civil or criminal proceeding being tried or heard before the Supreme Court or the Full Court at the commencement of this Ordinance shall continue before the High Court and the Court of Appeal, respectively, and in the case of a proceeding before the Full Court any judge constituting that Full Court shall be deemed to be a Justice of Appeal for the purposes of that proceeding notwithstanding that he has not been appointed as such under this Ordinance; but any application for *habeas corpus* or for an order of *mandamus*, *certiorari* or prohibition being heard before the Full Court at the commencement of this Ordinance shall continue before the High Court and any judge constituting that Full Court who has been appointed a Justice of Appeal under this Ordinance shall be deemed to be a judge of the High Court for the purposes of the hearing and determination of that application.

(3) Without prejudice to subsections (1) and (2), the Chief Justice may by order make such provision, either generally or with respect to any particular case or proceeding, as may be necessary to ensure effective transition from the repealed Supreme Court Ordinance to this Ordinance.

(Cap. 4.)

SCHEDULE

[s. 58(2).]

Ordinance

Amendment

(Cap. 1.)

Interpretation and General Clauses Ordinance

Section 3 is amended by deleting the definition of "judge" and substituting the following—

" "judge" means the Chief Justice, a Justice of Appeal, a judge of the High Court of Justice and a Commissioner of the High Court of Justice;"

<i>Ordinance</i>	<i>Amendment</i>	
Bankruptcy Ordinance	Section 122(4) is amended by deleting "sections 25, 26, 27 and paragraph (t) of subsection (1) of section 38 of the Supreme Court Ordinance" and substituting the following— "sections 29, 30 and 31 of the Supreme Court Ordinance 1975".	(Cap. 6.)
Landlord and Tenant (Consolidation) Ordinance	Section 85(1) is amended by deleting "to the Full Court under section 29 of the Supreme Court Ordinance" and substituting the following— "to the Court of Appeal under section 14 of the Supreme Court Ordinance 1975".	(Cap. 7.)
Evidence Ordinance	Sections 53(6) and 57 (8) are amended by deleting "section 38 of the Supreme Court Ordinance" and substituting in both cases the following— "section 54 of the Supreme Court Ordinance 1975".	(Cap. 8.)
Judgments (Facilities for Enforcement) Ordinance	Section 5 is amended by deleting "under section 38 of the Supreme Court Ordinance" and substituting the following— "under the Supreme Court Ordinance 1975".	(Cap. 9.)
Labour Tribunal Ordinance	Section 6 is amended in subsection (2) by deleting "under section 18(1) of the Supreme Court Ordinance".	(Cap. 25.)
Urban Council (Election Petitions) Regulations	Regulation 20 is amended by deleting "under section 35 of the Supreme Court Ordinance" and substituting the following— "under section 52 of the Supreme Court Ordinance 1975".	(Cap. 101, sub. leg.)
Inland Revenue Ordinance	Section 69(7) is amended by deleting "the Full Court Ordinance,".	(Cap. 112.)
Matrimonial Causes Rules	Rule 2(2) is amended in the definition of "judge" by deleting "section 13A of the Supreme Court Ordinance" and substituting the following— "section 10 of the Supreme Court Ordinance 1975".	(Cap. 179, sub. leg.)
Road Traffic Ordinance	Section 2(1) is amended by deleting the definition of "Supreme Court".	(Cap. 220.)
Magistrates Ordinance	Sections 105, 108, 112, 113, 115(4) and 118(1)(d), (e) and (f) are amended by deleting "of the court" wherever it occurs.	(Cap. 227.)
Compulsory Service Ordinance	Section 13 is amended— (a) in subsection (1)(a) by deleting "conferred upon the Supreme Court by sections 31 and 32 of the Supreme Court Ordinance" and substituting the following— "possessed by the Supreme Court in respect of the punishment of witnesses for non-attendance and persons guilty of contempt of court"; and	(Cap. 246.)

## Ordinance

## Amendment

- (b) by deleting the proviso to subsection (2) and substituting the following new proviso—  
 “Provided that an appeal shall lie to the Court of Appeal in respect of any exercise by the Compulsory Service Tribunal of any of the powers of punishment conferred by subsection (1)(a).”.
- (Cap. 253.) Variation of Trusts Ordinance  
 Section 3(4) is amended by deleting “subsection (2) of section 8 of the Supreme Court Ordinance” and substituting the following—  
 “section 12(2) of the Supreme Court Ordinance 1975”.
- (Cap. 290.) Adoption Ordinance  
 Section 12(1) is amended by deleting “under section 38 of the Supreme Court Ordinance” and substituting the following—  
 “under the Supreme Court Ordinance 1975”.
- (Cap. 319.) Foreign Judgments (Reciprocal Enforcement) Ordinance  
 Sections 2(1), 5(1) and 12 are amended by deleting “under section 38 of the Supreme Court Ordinance” and substituting in each case the following—  
 “under the Supreme Court Ordinance 1975”.
- (Cap. 336.) District Court Ordinance  
 Section 10 is amended—  
 (a) in paragraph (a) by deleting “under section 12(2) of the Supreme Court Ordinance” and substituting the following—  
 “under section 6(1) of the Supreme Court Ordinance 1975”; and  
 (b) in paragraph (b) by deleting “under section 13A(1) of the Supreme Court Ordinance” and substituting the following—  
 “under section 10(1) of the Supreme Court Ordinance 1975”.  
 Section 14(2) and (4) are amended by deleting in both cases “under section 18(1) of the Supreme Court Ordinance”.
- (Cap. 341.) Arbitration Ordinance  
 Section 23(3) is amended by deleting “section 29 of the Supreme Court Ordinance” and substituting the following—  
 “section 14 of the Supreme Court Ordinance 1975”.  
 Section 38(3) is amended by deleting “under section 38 of the Supreme Court Ordinance” and substituting the following—  
 “under the Supreme Court Ordinance 1975”.
- (Cap. 349.) Administration of Justice (Miscellaneous Provisions) Ordinance  
 Section 2(4) is amended by deleting “in accordance with section 28 of the Supreme Court Ordinance”.  
 Section 5 is amended by deleting “under section 38 of the Supreme Court Ordinance” and substituting the following—  
 “under the Supreme Court Ordinance 1975”.

*Ordinance**Amendment*

Law Reform  
(Miscellaneous  
Amendments)  
Ordinance

The Schedule is amended in item 1 in the (Cap. 350.)  
*Amendment* column—

(a) by deleting “Section 30A” and substituting  
the following—

“Section 48”;

(b) by deleting “subsection (4)” and substituting  
the following—

“subsection (3)”; and

(c) by renumbering new subsections (5), (6), (7)  
and (8) as subsections (4), (5), (6) and (7)  
respectively.

Small Claims  
Tribunal Ordinance  
1975

Section 28(4) is amended by deleting “section 37A (79 of 1975.)  
of the Supreme Court Ordinance” and substitut-  
ing the following—

“section 50 of the Supreme Court Ordinance  
1975”.

Passed by the Hong Kong Legislative Council this 17th day of  
December, 1975.

K. H. WHEELER,

*Clerk to the Legislative Council.*

*This printed impression has been carefully compared by me  
with the bill, and is found by me to be a true and correctly  
printed copy of the said bill.*

K. H. WHEELER,

*Clerk to the Legislative Council.*